

JPD-5
Ct No.01
22.07.2025
(sss)

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side

CO 135 of 2024

Smt. Reba Narayan and Ors.
vs
Sri Kumar Prashanta and Ors.

Mr. Amritam Mandal,
Mr. Debasish Mukhopadhyay,
Mr. Partha Choudhury,
Ms. Madhushri Dutta,
Mr. Subrata Sarkar
.....For the Appellants.

1. Despite service, none appears on behalf of the opposite parties. Accordingly, the matter is taken up for hearing ex parte.

2. The defendants in a suit for partition and ancillary reliefs have preferred the present revisional application against an order whereby a preliminary issue as to maintainability of the suit was decided in favour of the plaintiffs.

3. By an Order dated November 24, 2023, a learned Single Judge of this court, sitting in Jalpaiguri Circuit, had disposed of a previous revisional application with a direction upon the trial court to frame a preliminary issue as to whether the suit is maintainable or not in its present form.

4. The issue was framed in the context that the entire suit property, to which the plaintiffs/opposite parties claim title, was alleged by the defendants/petitioners to have been transferred by their predecessor-in-interest in the years 1963 and 1964.

5. For such purpose, the defendants/petitioners also sought to tender such deeds of transfer in evidence.

6. Pursuant to the order of the learned Single Judge, a preliminary issue was framed on February 23, 2024 to the effect as to whether the suit is maintainable in its present form or not.

7. However, by the impugned order, the learned Trial Judge proceeded to decide the issue without permitting the registered transfer deeds, which were furnished by the defendants/petitioners in support of their claim of non-maintainability of the suit, to be tendered in evidence for marking the said documents as Exhibits.

8. Without marking the documents as Exhibits, the learned Trial Judge acted *de hors* jurisdiction in deciding the issue in the first place.

9. Secondly, the learned Trial Judge decided the preliminary issue in an entirely slipshod fashion, inasmuch as the learned Trial Judge did not even advert to the deeds produced by the defendants/petitioners.

10. Thirdly, the learned Trial Judge gave precedence to recording of the plaintiffs' names in the Records of

Rights, which do not confer or create any title in law, over the title deeds produced by the defendants.

11. The learned Trial Judge, surprisingly, held that the documents relied on by the parties are not yet exhibited, but made no endeavour to ensure that such documents were permitted to be marked as Exhibits upon being duly proved.

12. That apart, the learned Trial Judge also observed in the impugned order that without going into the merits of the suit, it would not be proper to come to an adverse finding in respect of a government revenue record or a registered title deed. Such logic is not tenable in the eye of law, since adjudication on such aspects was a *sine qua non* for deciding the preliminary issue.

13. The learned Trial Judge ought to have permitted the defendants to mark the title deeds relied on by them as Exhibits and in the event the plaintiffs wanted to rely on extracts of Records of Rights, also to permit the plaintiffs to mark such documents as Exhibits before proceeding to decide the preliminary issue. Hence, the impugned order suffers from material irregularities and palpable illegalities.

14. Accordingly, CO 135 of 2024 is allowed, thereby setting aside order no. 22 dated May 18, 2024 passed by the learned Civil Judge (Senior Division) at Jalpaiguri in Title Suit no. 6 of 2022 and remanding the

matter to the learned Trial Judge for a fresh adjudication on the preliminary issue already framed by the learned Trial Judge, after giving an opportunity to the plaintiffs and the defendants to mark as Exhibits the respective documents on which they seek to rely on for the purpose of deciding the preliminary issue.

15. Upon such marking of Exhibits, the learned Trial Judge shall give a short opportunity of hearing to both parties and decide the preliminary issue as framed.

16. It is expected that in view of the time already elapsed, the learned Trial Judge shall expedite the entire process and, preferably, conclude the process of adjudication on the preliminary issue within three months from the date of communication of this order to the learned Trial Court.

17. No order as to costs.

(Sabyasachi Bhattacharyya, J.)